

ADAMS, J.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,

) CASE NO. 1:19CR147

Plaintiff,

)

v.

)

JEFFREY AUVIL,

) Judge John R. Adams

Defendant.

) ORDER

)

)

Pending before the Court is Defendant Jeffrey Auvil's *pro se* motion for compassionate release.¹ Doc. 580. Upon review, the motion is DENIED.

Within the COVID-19 backdrop, the Sixth Circuit has recently explained this Court's duties and obligations when considering a motion for compassionate release.

Sections 3582(c)(1)'s and (c)(2)'s parallel language and structure compel us to conclude that compassionate release hearings are sentence-modification proceedings and that courts considering motions filed under § 3582(c)(1) must follow a *Dillon*-style test. The three-step § 3582(c)(1)(A) test is as follows. At step one, a court must "find[]" whether "extraordinary and compelling reasons warrant" a sentence reduction. 18 U.S.C. § 3582(c)(1)(A)(i). At step two, a court must "find[]" whether "such a reduction is consistent with *applicable* policy statements issued by the Sentencing Commission." *Id.* § 3582(c)(1)(A) (emphasis added). The Commission's policy statement on compassionate release resides in U.S.S.G. § 1B1.13. *See* U.S.S.G. § 1B1.13 (U.S. Sent'g Comm'n 2018). Thus, if § 1B1.13 is

¹ Auvil's appointed counsel requested and received an extension of time to review his motion and determine whether to file a supplement. That extension ended on 8/15/2020. No supplement has been provided.

still “applicable,” courts must “follow the Commission's instructions in [§ 1B1.13] to determine the prisoner's eligibility for a sentence modification and the extent of the reduction authorized.” At step three, “§ 3582(c)(1)(A) instructs a court to consider any applicable § 3553(a) factors and determine whether, in its discretion, the reduction authorized by [steps one and two] is warranted in whole or in part under the particular circumstances of the case.”

United States v. Jones, 980 F.3d 1098, 1107–08 (6th Cir. 2020)(citations and footnotes omitted).

However, “[i]n cases where incarcerated persons file motions for compassionate release, federal judges may skip step two of the § 3582(c)(1)(A) inquiry and have full discretion to define ‘extraordinary and compelling’ without consulting the policy statement § 1B1.13.” *Id.* at 1111.

Initially, the Court notes that when he filed his motion, Auvil was housed at FCI Hazelton. Thus, his motion describes the conditions at that location. Auvil, however, is now housed at Cincinnati RRM, a residential re-entry facility. As such, Auvil’s discussion of Hazelton does not assist the Court. From its review, the Court has found no indication of any positive case reported from Cincinnati RRM. Auvil has also not offered any suggestion that he has any medical condition that enhances his risk were he to contract the virus. Accordingly, his motion for compassionate release is DENIED. See *United States v. Elias*, 984 F.3d 516, 521 (6th Cir. 2021) (finding that it was not an abuse of discretion to deny compassionate release when Alderson had no reported cases and therefore only presented a speculative risk to the movant).

Based upon his failure to demonstrate extraordinary and compelling circumstances, the Court hereby DENIES Auvil’s motion for compassionate release.

IT IS SO ORDERED.

February 5, 2021
Date

/s/John R. Adams
JOHN R. ADAMS
UNITED STATES DISTRICT JUDGE